



June 27, 2002

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2002-3515

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165140.

The Waco Police Department (the “department”) received a request for the affidavit for the arrest of a named individual. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the document at issue.

Initially, we note that if the affidavit has been filed with a court it is a matter of public record and may not be withheld unless the information is otherwise confidential by law. *See* Gov’t Code § 552.022(a)(17) (providing for required public disclosure of information that is matter of public court record); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Your claimed exceptions to disclosure, sections 552.103 and 552.108, are discretionary and do not make information confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov’t Code § 552.103); Open Records Decision No. 473 at 2 (1987) (discretionary exceptions under Public Information Act can be waived). Thus, if the affidavit has been filed with a court, it may not be withheld under either section 552.103 or 552.108.

We note, however, that the affidavit contains Texas license plate numbers that are made confidential by section 552.130 of the Government Code. Section 552.130 excepts from disclosure certain motor vehicle information that is issued by an agency of this state. Since this provision was enacted to protect the privacy of an individual, the protection extinguishes upon the individual’s death. *See generally* Attorney General Opinion H-917 (1976) (common-law privacy under Gov’t Code § § 552.101 and 552.102 lapses on person’s death); Open Records Decision Nos. 536 (1989) (Gov’t Code § 552.119 does not except peace officer’s photograph after officer’s death), 524 (1989) (Gov’t Code § 552.114 does not

except student records after student's death). Thus, the department may not withhold a deceased person's section 552.130 information. Accordingly, if the affidavit has been filed with a court, the department must only withhold the marked license plate numbers under section 552.130. The remaining information must be released.

We will, however, address your claimed exceptions to disclosure on the chance that the affidavit was not filed with a court. Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the affidavit relates to an active murder investigation. You also state that the release of the affidavit would interfere with investigation and prosecution of the offense. Based on your representations, we conclude that you have shown the applicability of section 552.108(a)(1) to the submitted document. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus if the affidavit has not been filed with a court, it may be withheld from disclosure under section 552.108.¹

In summary, if the affidavit has been filed with a court, the department must only withhold the marked license plate numbers. If, however, the affidavit has not been filed with a court, the department may withhold the document in its entirety under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

¹Because we are able to make a determination under section 552.108, we need not address your arguments under section 552.103.

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

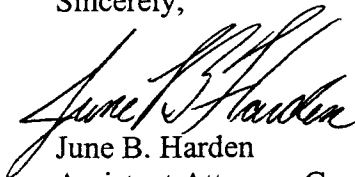
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/sdk

Ref: ID# 165140

Enc: Submitted documents

c: Mr. Phil Martinez
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(w/o enclosures)